

## REMARKS

Claims 1-12 and 43-49 are pending in the application. Claims 1, 4, 43, and 47 are independent. In the present paper, Claims 1, 4, 43, and 47 have been amended. These changes are believed to introduce no new matter and their entry is respectfully requested.

### Objection to Claims 1-12 and 43-49

In paragraph 3 of the Office Action, the Examiner rejected claims 1-12 and 43-49 citing informalities. In the present paper, Applicant has amended claims 1, 4, 43, and 47 to accommodate the Examiner. Accordingly, Applicant respectfully requests that the Examiner reconsider and remove the objection to claims 1-12 and 43-49.

### Rejection of Claims 1-12 Under 35 U.S.C. §101

In paragraph 5 of the Office Action, the Examiner rejected claims 1-12 under 35 U.S.C. §101 as being directed to non-statutory subject matter. Applicant respectfully traverses the rejection. Specifically, the Examiner further that method claims must be tied to another statutory class of invention to be patent eligible under 35 U.S.C. §101. Applicant respectfully disagrees with the Examiner's characterization of claims 1-12.

Although Applicant disagrees with the Examiner's characterization of claims 1-12, in an effort to expedite prosecution Applicant have amended claims 1 and 4 to recite in relevant part "A method for distributing content *using a multi-stage broadcast apparatus*, comprising: broadcasting content descriptors, which are sets of attribute values that describe pieces of available content being considered for potential inclusion in a future broadcast schedule, but not included in a previous broadcast schedule, *from a multi-stage broadcast apparatus to a plurality of clients*, wherein the broadcast of the content descriptors is transparent to users of the plurality of clients" (emphasis added). Claims 2-3 and 5-12 include this feature by virtue of their dependency on claims 1 and 4, respectively. Applicant respectfully submits that this amendment overcomes the rejection and request that the rejection to claims 1-12 be reconsidered and withdrawn.

Rejection of Claims 1-12 and 43-49 Under 35 U.S.C. §102(e)

In the Office Action, the Examiner maintained the rejection of claims 1-12 and 43-49 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Publication No. U.S. 2004/0117831 to Ellis et al. (hereinafter “*Ellis*”). Applicant respectfully traverses the rejection.

A claim is anticipated only if each and every element of the claim is found, either expressly or inherently, in a reference. (MPEP §2131 *citing Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628 (Fed. Cir. 1987)). The identical invention must be shown in as complete detail as is contained in the claim. *Id. citing Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989)). The elements must be arranged as required by the claim. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

Representative claim 1 recites in pertinent part “***broadcasting*** content descriptors, which are sets of attribute values that describe pieces of available content being considered for potential inclusion in a future ***broadcast schedule***, but not included in a previous broadcast schedule, from a multi-stage broadcast apparatus ***to a plurality of clients***, wherein the broadcast of the content descriptors is transparent to users of the plurality of clients; receiving first feedback from the plurality of clients regarding the content descriptors, the first feedback being an indication from the plurality of clients of the relative desirability of the available content described by the content descriptors, the first feedback being based on previous content consumption by ***the plurality of clients***, the first feedback being automated and transparent to the ***users*** of the plurality of clients and in response to a trigger from a broadcaster of the content descriptors; refining a list of available content in response to the first feedback to create the future ***broadcast schedule***, wherein refining the list of available content prioritizes an order in which at least a portion of the available content described by the content descriptors will be ***broadcast; broadcasting*** a further descriptive content included in the content listed in the refined list of available content ***to the plurality of clients***, the further descriptive content describing pieces of content that are more likely to be ranked, rated, and/or consumed” (emphasis added). Claims 4, 43, and 47 recite similar subject matter.

In the Office Action, the Examiner states that *Ellis* discloses the identical invention

recited in claims 1, 4, 43, and 47. In particular, the Examiner argues that *Ellis* discloses broadcasting content descriptors to a plurality of clients. Applicant respectfully disagrees.

Applicant respectfully submit that *Ellis* fails to disclose broadcasting content descriptors to a plurality of clients, receiving feedback from those clients (all of them) based on relative desirability of the content described in the broadcasted content descriptors in an automated/transparent manner, and making a new ***broadcast schedule*** based on the feedback from all of the clients. In *Ellis*, there is no new broadcast schedule. The content proposed to be sent to subscribers is not in a broadcast schedule. It is content that is for a particular user based on the user's explicit feedback. This content is not intended to be scheduled to be broadcast to all users because the feedback from individuals is different. The content proposed to be sent is on a per-user basis rather than based on what is to be broadcast to all clients. That is, *Ellis* appears to be directed to determining what will be ***selectively provided*** to particular users whereas embodiments of the present invention are directed to what to ***broadcast*** to all clients. Thus, making a broadcast schedule for users in *Ellis* defeats the purpose of *Ellis*, which is it tailor content to specific user's likes.

Applicant respectfully submits further that *Ellis* fails to disclose ***broadcasting*** further descriptive content to all of the clients based on the feedback, and receiving further feedback from all of the clients based on the broadcasted further descriptive content. Although *Ellis* appears to provide content to users, the content is not broadcast to all subscribers. The content in *Ellis* that is sent to the user in response to feedback is user-specific. That is, content in *Ellis* ***is sent only to specific users*** based on feedback from the particular user. The further content in *Ellis* ***is not broadcast*** to all users.

Applicant respectfully submits that because *Ellis* fails to disclose the identical invention recited in claims 1, 4, 43, and 47, claims 1, 4, 43, and 47 are patentable over *Ellis*. Claims 2-3 properly depend from claim 1 and are thus patentable for at least the same reasons that claim 1 is patentable. (MPEP §2143.03 (citing *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988))). Claims 5-12 properly depend from claim 4 and are thus patentable for at least the same reasons that claim 4 is patentable. (Id.) Claims 44-46 properly depend from claim 43 and are thus

patentable for at least the same reasons that claim 43 is patentable. (Id.) Claims 48-49 properly depend from claim 47 and are thus patentable for at least the same reasons that claim 47 is patentable. (Id.) Accordingly, Applicant respectfully requests that the Examiner reconsider and remove the rejection to claims 1-12 and 43-49.

## CONCLUSION

Applicant respectfully submits that all grounds for rejection have been properly traversed, accommodated, or rendered moot and that the application is now in condition for allowance. The Examiner is invited to telephone the undersigned representative if the Examiner believes that an interview might be useful for any reason.

Respectfully submitted,

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